

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellant,

UNPUBLISHED  
June 16, 2015

v

RENEE LEE BULLOCK,  
  
Defendant-Appellee.

No. 324624  
Oakland Circuit Court  
LC No. 2014-141005-AR

---

Before: MARKEY, P.J., and OWENS and GLEICHER, JJ.

PER CURIAM.

The district court refused to bind defendant over for trial on a charge of identity theft, concluding that the prosecutor failed to establish probable cause to believe that defendant was the person behind the crime. The circuit court affirmed this decision. Because the prosecutor presented more than adequate circumstantial evidence supporting a probable cause determination that a crime was committed and that defendant committed it, we reverse and remand to the circuit court for reinstatement of the charge.

**I. BACKGROUND**

The victim in this case is defendant's aunt, Maureen Deel. Defendant stands accused of using Deel's banking information without permission to pay \$716 in utility bills. No one challenges that a crime was committed. The only question is by whom. Over a two-day preliminary hearing, the prosecutor presented an abundance of evidence suggesting that defendant was the culprit. We recount the facts in considerable detail, as they are critical to our holding.

Defendant lived in a home at 17601 Kinloch Street in Redford Township that belonged to defendant's father, Deel's brother. The DTE account for electrical service at 17601 Kinloch was opened on May 8, 2012, in the name of Enrique Baber. Baber is the father of defendant's son. The prosecutor presented hearsay evidence that Baber had not personally opened the account or authorized the use of his name to do so. DTE records presented into evidence revealed a balance of \$305.22 owing on the day the account was opened. Deel testified that she paid that balance via credit card over the telephone with a DTE representative so that defendant could secure electrical service.

The prosecutor also connected defendant to activity on the Kinloch DTE account. A DTE representative explained documentary evidence placed on the record. DTE account activity logs showed that to access the account connected with 17601 Kinloch on DTE's public website, one had to use a "login user name" of "rbullock521@gmail.com." The logs detailed each time this user name was employed to access the account between January 16 and May 2, 2013. On February 8 at 7:30 a.m., someone logged into the account on DTE's website as rbullock521@gmail.com and added a bank account. At 7:31 a.m., that person used this newly-added bank account to pay a bill. Bills were paid in this same manner on February 20, March 18, and April 16. Snapshots from the account's "maintain note[s]" establish that these payments were "made using the Checking Account number" ending in 3000. Another note indicates that "Renee" telephoned DTE on February 20, 2013, and asked to speak to a supervisor regarding a shut-off notification.

Deel testified that she maintains a checking account at Charter One Bank and the account number ends in 3000. DTE also supplied electrical services to her home in Northville. In March 2013, DTE notified Deel by mail that her service would be disconnected on April 5 due to nonpayment. Deel reviewed her bank statements and saw two February and one March payments to DTE.<sup>1</sup> As Deel had arranged for automatic payment of her DTE bills, she assumed these transactions paid her own indebtedness. When Deel telephoned DTE, she learned that the subject payments had been credited for services at 17601 Kinloch. She confronted defendant, who denied any wrongdoing. However, Deel knew that defendant had access to her checking account and bank routing numbers, both necessary to make a payment through DTE's website, because Deel had written two checks to defendant in late 2012.

Deel reported the use of her checking account to the police. During the investigation, the April 16, 2013 payment was made through DTE's website. Defendant voluntarily came to the Novi Police Department to discuss the issue and suggested to the investigating officer that one of her roommates could have taken Deel's check from her room and used the information to pay the electric bills. After learning "certain details as to how these payments were made," Deel confronted defendant again, and defendant "at that time admit[ted] her guilt."

Despite this evidence, the district court, Judge Brian Mackenzie presiding, refused to bind defendant over for trial. The district court expressed concern over the prosecutor's failure to present evidence proving that the email address connected to the DTE account belonged to defendant or to explain how defendant would have access to Deel's password information to make a payment on the DTE website (apparently ignoring evidence that Deel's password information was not used in the transactions). Ultimately, the district court ruled that the evidence established probable cause to believe a crime was committed but not to connect defendant as the offender.

[D]o I know how many people lived at that address? No. Do I know who possessed these accounts, the email or telephone accounts listed on [the DTE]

---

<sup>1</sup> The amounts were pulled from the checking account a day or two after each transaction on DTE's website.

document? No. Prosecutor argues that I should draw from the business records, the hearsay statement which is admissible in this regard, that rbullock521@gmail.com means it's the defendant's account and that the; Renee, means it's the defendant and they produced evidence the account listed Enrique Baber's name was not Enrique Baber.

. . . I don't know how these accounts are set up, whether there needs to be a password, whether DTE checks these checking accounts or not. The Prosecutor argues that I should note there is some evidence that the defendant had access to a check and a routing number, although I'm not exactly sure how we get to the routing number but still,<sup>[2]</sup> I'm accepting that for purposes of this analysis.

Somehow I draw from that and these documents that it was the defendant who for purposes of probable cause is likely to have committed this offense. That's the totality of their evidence. There is no one testifying for DTE with regard to the way accounts are set up. So I would know whether an individual such as the defendant could set up a separate account without using the defendant's password. Because . . . without using the complainant[']s password, as the complainant has testified she has a separate password account attached to her bank with DTE. Can you have two accounts on the same checking account for that, I don't know. The prosecutor hasn't produced such evidence.

. . . What they did is say I have to somehow find probable cause based on a name Renee, and an email account that anyone could have created just like Enrique Baber name was created.

Now, the last piece of evidence that the prosecutor has and perhaps the strongest circumstantial evidence is that there was some benefit to whoever lived at that house and that there's no question the defendant is one of the people that lived at that house, perhaps the only one but I don't know that.

. . . [T]hey haven't produced evidence to satisfy me to a probable cause level that the defendant is the person likely who committed this crime. Case is dismissed.

The prosecutor appealed this decision to the Oakland Circuit Court. The circuit court declined to set aside the district court's decision because it could find no abuse of discretion on the lower court's part. We thereafter granted the prosecutor's application for leave to appeal. *People v Bullock*, unpublished order of the Court of Appeals, entered January 16, 2015 (Docket No. 324624).

---

<sup>2</sup> It is common knowledge that a bank's routing number appears on the face of every check. See <<https://www.fdic.gov/regulations/laws/rules/6500-3215.html>> (accessed June 1, 2015). Accordingly, we discern no ground for the district court's confusion.

## II. ANALYSIS

The prosecutor argues on appeal that there was sufficient evidence at the preliminary examination to create probable cause to believe that defendant committed identity theft, and therefore the district court abused its discretion in declining to bind defendant over for trial. We agree and therefore reverse the district and circuit court's rulings to the contrary.

A district court's bindover decision that is contingent on the factual sufficiency of the evidence is reviewed for an abuse of discretion. A circuit court's review of the bindover decision involves examination of the entire preliminary examination record, and it may not substitute its judgment for that of the lower court. However, this Court reviews de novo the bindover decision to determine whether the district court abused its discretion, giving no deference to the circuit court's decision. [*People v Norwood*, 303 Mich App 466, 468; 843 NW2d 775 (2013).]

A district court abuses its discretion in making a bind over decision when that decision "falls outside the range of reasonable and principled outcomes" or when "it makes an error of law." *People v Waterstone*, 296 Mich App 121, 131-132; 818 NW2d 432 (2012).<sup>3</sup>

Preliminary examinations are not a constitutional requirement, but a statutory creation. *People v Plunkett*, 485 Mich 50, 56; 780 NW2d 280 (2010). Pursuant to MCL 766.13, a magistrate must bind over a defendant for trial when the prosecutor presents evidence showing that there is probable cause to believe that a felony has been committed and that the defendant committed it. *Plunkett*, 485 Mich at 57. To establish probable cause, the prosecutor must present "evidence from which at least an inference may be drawn establishing the elements of the crime charged." *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003).

The probable-cause standard of proof is, of course, less rigorous than the guilt-beyond-a-reasonable-doubt standard of proof. Probable cause requires a quantum of evidence sufficient to cause a person of ordinary prudence and caution to conscientiously entertain a reasonable belief of the accused's guilt. Yet, to find probable cause, a magistrate need not be without doubts regarding guilt. The reason is that the gap between probable cause and guilt beyond a reasonable doubt is broad and finding guilt beyond a reasonable doubt is the province of the jury. [*Id.* (quotation marks and citations omitted).]

"If the evidence introduced at the preliminary examination conflicts or raises a reasonable doubt about the defendant's guilt, the magistrate must" bind the defendant over for trial and "let the factfinder at trial resolve those questions of fact." *People v Hudson*, 241 Mich App 268, 278; 615 NW2d 784 (2000).

---

<sup>3</sup> We noted that the circuit court used an outdated abuse-of-discretion standard in its review.

Moreover, probable cause can be established by circumstantial evidence and reasonable inferences arising therefrom. *People v Greene*, 255 Mich App 426, 444; 661 NW2d 616 (2003). And circumstantial proof is sufficient to prove the identity of a criminal offender. See *People v Sullivan*, 290 Mich 414, 418; 287 NW 567 (1939).

Defendant was charged with identity theft in violation of MCL 445.65. MCL 445.65(1)(a)(i) proscribes the use of another person's "personal identifying information" to "[o]btain credit, goods, [or] services." "Personal identifying information," as used in MCL 445.65, includes information used to gain access to another's bank accounts. MCL 445.63(q).

When the evidence is properly understood, it is clear that the prosecutor presented more than adequate evidence to establish probable cause to believe that defendant committed identity theft. In satisfaction of the statutory elements of the offense, the prosecutor established that someone used Deel's personal identifying information—her checking account number—to procure electrical services from DTE. And the circumstantial evidence and reasonable inferences arising therefrom create a factual question regarding defendant's guilt that must be placed before a jury.

Defendant lived at 17601 Kinloch and benefitted from the payments made through Deel's checking account. The DTE records revealed that defendant had not remained current on her indebtedness to DTE, even after her aunt paid outstanding bills in 2012, and DTE had threatened to turn off her power, giving defendant motive to commit the offense. Deel had written defendant two checks within the preceding months, giving defendant access to the personal identifying information necessary to conduct the subject transactions on DTE's website. Defendant acknowledged to the investigating officer that these checks supplied the necessary information, suggesting that a roommate had stolen the information from her room. The district court mistakenly believed that the offender needed Deel's user login name and password to enter DTE's website to pay the bills connected with 17601 Kinloch. The evidence established that Deel's banking information was used on a DTE account accessed by *rbullock521@gmail.com* using the password established by the person who created internet access to the Kinloch account. Even if the offender logged into the website as Deel, the question of how the offender gathered the necessary passwords would not negate the existence of probable cause, as the challenged transactions were made by the person who logged in as "*rbullock521@gmail.com*." It is similarly irrelevant at this early stage whether DTE's system would permit one banking account to be connected to two separate utility accounts. The record is clear that Deel's banking information had been connected to the account for 17601 Kinloch, and due to unknown and irrelevant events, had not been used to pay Deel's account as she had previously arranged. Most damning is Deel's testimony that defendant admitted her guilt to her. This created at least a credibility contest that the factfinder must resolve.

The reasonable inference from this evidence is that defendant logged onto DTE's website, changed her account payment information to withdraw funds from Deel's checking account, and then made four payments by this method. Accordingly, the district court erroneously found a lack of probable cause and abused its discretion in declining to bind defendant over for trial. The circuit court compounded the error by upholding the district court's decision.

We therefore reverse and remand to the circuit court for reinstatement of the identity-theft charge against defendant. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Donald S. Owens

/s/ Elizabeth L. Gleicher